



General Assembly

January Session, 2001

Raised Bill No. 6573

LCO No. 2991

Referred to Committee on Public Health

Introduced by:
(PH)

***AN ACT CONCERNING THE RIGHTS OF PERSONS UNDER
SUPERVISION OF THE COMMISSIONER OF MENTAL RETARDATION.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 17a-238 of the general statutes is repealed and the following
2 is substituted in lieu thereof:

3 (a) No person placed or treated under the direction of the
4 Commissioner of Mental Retardation in any public or private facility
5 shall be deprived of any personal, property or civil rights, except in
6 accordance with due process of law.

7 (b) Each person placed or treated under the direction of the
8 Commissioner of Mental Retardation in any public or private facility
9 shall be protected from harm and receive humane and dignified
10 treatment which is adequate for [his] such person's needs and for [his]
11 the development [to his] of such person's full potential at all times,
12 with full respect for [his] such person's personal dignity and right to
13 privacy consistent with [his] such person's treatment plan as
14 determined by the commissioner. No treatment plan or course of
15 treatment for any person placed or treated under the direction of the

16 commissioner shall include the use of an aversive device which has not
17 been tested for safety and efficacy and approved by the federal Food
18 and Drug Administration except for any treatment plan or course of
19 treatment including the use of such devices which was initiated prior
20 to October 1, 1993. No treatment plan or course of treatment prescribed
21 for any person placed or treated under the direction of the
22 commissioner shall include the use of aversive procedures except in
23 accordance with procedures established by the Commissioner of
24 Mental Retardation. For purposes of this subsection, "aversive
25 procedure" means the contingent use of an event which may be
26 unpleasant, noxious or otherwise cause discomfort to alter the
27 occurrence of a specific behavior or to protect an individual from
28 injuring himself or herself or others and may include the use of
29 physical isolation and mechanical and physical restraint. Nothing in
30 this subsection shall prohibit persons who are not placed or treated
31 under the direction of the Commissioner of Mental Retardation from
32 independently pursuing and obtaining any treatment plan or course of
33 treatment as may otherwise be authorized by law. The commissioner
34 shall adopt regulations, in accordance with chapter 54, to carry out the
35 provisions of this subsection.

36 (c) The Commissioner of Mental Retardation shall adopt
37 regulations, in accordance with the provisions of [sections 4-166 to 4-
38 176, inclusive] chapter 54, with respect to each facility or institution
39 under [his] the jurisdiction of the commissioner, with regard to the
40 following: (1) Prohibiting the use of corporal punishment; (2) when
41 and by whom therapies may be used; (3) which therapies may be used;
42 and (4) when a person may be placed in restraint or seclusion or when
43 force may be used upon a person.

44 (d) A copy of any order prescribing the use of therapy, restraint or
45 seclusion in accordance with the regulations adopted [in] under
46 subsection (c) of this section shall be made a part of the person's
47 permanent clinical record together with the reasons for each such
48 order and made available in compliance with existing statutes relating

49 to the right to know.

50 (e) The Commissioner of Mental Retardation shall ensure that each
51 person placed or treated under [his] the commissioner's direction in
52 any public or private facility is afforded the following rights and
53 privileges: (1) The right to prompt, sufficient and appropriate medical
54 and dental treatment; (2) the right to communicate freely and privately
55 with any person, including, but not limited to, an attorney or other
56 legal representative of [his] the person's choosing; (3) the right to
57 reasonable access to a telephone, both to make and receive calls in
58 private, unless such access is used in violation of any federal or state
59 statute; (4) the right to send and receive unopened mail and to make
60 reasonable requests for assistance in the preparation of
61 correspondence; (5) the safety of each person's personal effects shall be
62 assured including the provision of reasonably accessible individual
63 storage space; (6) the right to be free from unnecessary or excessive
64 physical restraint; (7) the right to voice grievances without
65 interference; (8) the right to a nourishing and well-balanced diet; (9)
66 the right to be employed outside a facility and to receive assistance in
67 his or her efforts to secure suitable employment. The department shall
68 encourage the employment of such persons and shall promote the
69 training of such persons for gainful employment, and all benefits of
70 such employment shall accrue solely to the person employed; (10) the
71 right to have the complete record maintained by the Department of
72 Mental Retardation concerning such person released for review,
73 inspection and copying to such person's attorney or other legal
74 representative notwithstanding any provisions of subsection (g) of
75 section 4-193 or section 4-194; and (11) the right to receive or purchase
76 his or her own clothing and personal effects, including toilet articles,
77 and the right to wear such clothing and use such personal effects
78 except where determined to be dangerous to the health or safety of the
79 individual or others.

80 (f) The Commissioner of Mental Retardation shall require the
81 attending physician of any person placed or treated under [his] the

82 direction of the commissioner to obtain informed written consent from
 83 the following persons prior to authorizing any surgical procedure or
 84 any medical treatment, excluding routine medical treatment which is
 85 necessary to maintain the general health of a resident or to prevent the
 86 spread of any communicable disease: (1) The resident if [he] such
 87 resident is eighteen years of age or over or is legally emancipated and
 88 competent to give such consent; (2) the parent of a resident under
 89 eighteen years of age who is not legally emancipated; or (3) the legal
 90 guardian or conservator of a resident of any age who is adjudicated
 91 unable to make informed decisions about matters relating to [his] such
 92 resident's medical care. The person whose consent is required shall be
 93 informed of the nature and consequences of the particular treatment or
 94 surgical procedure, the reasonable risks, benefits and purpose of such
 95 treatment or surgical procedure and any alternative treatment or
 96 surgical procedures which are available. The consent of any resident or
 97 of any parent, guardian or conservator of any resident may be
 98 withdrawn at any time prior to the commencement of the treatment or
 99 surgical procedure. The regional or training school director having
 100 custody and control of a resident of any facility may authorize
 101 necessary surgery for [any] such resident where, in the opinion of the
 102 resident's attending physician, the surgery is of an emergency nature
 103 and there is insufficient time to obtain the required written consent
 104 provided for in this section. The attending physician shall prepare a
 105 report describing the nature of the emergency which necessitated such
 106 surgery and shall file a copy of such report in the patient's record.

107 (g) The commissioner's oversight and monitoring of the medical
 108 care of persons placed or treated under the direction of the
 109 commissioner does not include the authority to make treatment
 110 decisions, except in limited circumstances in accordance with statutory
 111 procedures. In the exercise of such oversight and monitoring
 112 responsibilities, the commissioner shall not impede or seek to impede a
 113 properly executed medical order to withhold cardiopulmonary
 114 resuscitation. For purposes of this subsection, [a] "properly executed
 115 medical order to withhold cardiopulmonary resuscitation" means (1) a

116 written order by the attending physician; (2) in consultation and with
117 the consent of the patient or a person authorized by law; (3) when the
118 attending physician is of the opinion that the patient is in a terminal
119 condition, as defined in subsection (3) of section 19a-570, which
120 condition will result in death within days or weeks; and (4) when such
121 physician has requested and obtained a second opinion from a
122 Connecticut licensed physician in the appropriate specialty that
123 confirms the patient's terminal condition; [. A "properly executed
124 medical order to withhold cardiopulmonary resuscitation" also] and
125 includes the entry of such an order when the attending physician is of
126 the opinion that the patient is in the final stage of a terminal condition
127 but cannot state that the patient may be expected to expire during the
128 next several days or weeks, or, in consultation with a physician
129 qualified to make a neurological diagnosis, deems the patient to be
130 permanently unconscious, provided the commissioner has reviewed
131 the decision with the department's director of community medical
132 services, the family and guardian of the patient and others who the
133 commissioner deems appropriate, and determines that the order is a
134 medically acceptable decision.

135 (h) Any person applying for services from the Commissioner of
136 Mental Retardation or any person placed by a probate court under the
137 direction of the Commissioner of Mental Retardation, and such
138 person's parents or guardian, shall be informed orally and in writing at
139 the time of application or placement of the rights guaranteed by this
140 section and the provisions of subdivision (5) of section 46a-11. A
141 summary of [these] such rights shall be posted conspicuously in the
142 public areas of every public or private facility providing services to
143 persons under the care of the Commissioner of Mental Retardation.

Statement of Purpose:

To provide that the regional or training school director who has custody and control of a client of the Department of Mental Retardation has the authority to consent to necessary emergency surgery on behalf of such client and to make technical changes.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]